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International Association of Machinists and Aerospace Workers, District Lodge No. 160 and SSA Terminals, LLC and International Longshore and Warehouse Union, Local 19. Case 19–CD–238056

July 16, 2020

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN RING¹ AND MEMBERS KAPLAN
AND EMANUEL

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act. SSA Terminals, LLC (the Employer) filed an unfair labor practice charge on March 19, 2019,² alleging that International Association of Machinists and Aerospace Workers District Lodge 160, Local Lodge 289 (IAM), violated Section 8(b)(4)(D) of the Act by threatening to engage in proscribed activity with an object of forcing the Employer to assign certain work to employees represented by IAM rather than to employees represented by International Longshore and Warehouse Union (ILWU).

A hearing was held on April 24 and 25, and June 6, before Hearing Officer Daniel Hickey. Thereafter, the Employer, IAM, and ILWU each filed a posthearing brief.

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error.³ On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that the Employer, a Delaware corporation, operates and manages marine terminals and provides stevedore services at various ports located on the Puget Sound in Washington. The parties also stipulated,

and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the Board's jurisdiction and that IAM and ILWU are labor organizations.

II. THE DISPUTE

A. Background and Facts of the Dispute

The Employer operates and manages marine cargo terminals and provides stevedoring services at various ports along the Pacific Coast, including Terminals 5, 18, and 30, and Pier 91 at the Port of Seattle. The Employer is a member of the Pacific Maritime Association (PMA) and party to the PMA's Pacific Coast Labor Contract Document with ILWU (ILWU-PMA agreement).⁴ ILWU members primarily perform stevedoring work for the Employer, but also perform maintenance and repair (M&R) work at a number of the Employer's terminals on the Pacific Coast.⁵ The Employer is also party to a collective-bargaining agreement with IAM, covering employees performing M&R work at several SSA terminals, including those in the Port of Seattle.⁶ At the time of the hearing, IAM-represented mechanics performed M&R work at Terminals 18, 25, and 30 at the Port of Seattle, while ILWU-represented mechanics performed M&R work at Terminals 5 (the terminal at issue) and 46, and Pier 91 at the Port of Seattle.

During contract negotiations in July 2008, the PMA and ILWU signed a Letter of Understanding (LOU) providing that, for the years 2008–2013, any terminal operating with a non-ILWU work force would be “red-circled.” This meant that PMA members could continue to use non-ILWU employees at the red-circled terminals but had to use ILWU labor at all other terminals. Importantly, the LOU also provided that a terminal would lose its red-circle status if it is vacated by the terminal operator. The 2014–2019 ILWU-PMA agreement notes that “ILWU jurisdiction of [M&R] work shall not apply at those specific

¹ Chairman Ring has recused himself from consideration of this Decision and Determination of Dispute. He is a member of the panel for quorum purposes, but did not participate in this decision on the merits.

In *New Process Steel v. NLRB*, 560 U.S. 674 (2010), the Supreme Court left undisturbed the Board's practice of deciding cases with a two-member quorum when one of the panel members has recused himself. Under the Court's reading of the Act, “the group quorum provision [of Sec. 3(b)] still operates to allow any panel to issue a decision by only two members if one member is disqualified.” *New Process Steel*, 560 U.S. at 688; see also *American Postal Workers Union, AFL–CIO, Local 1901 (Postal Service)*, 369 NLRB No. 9, slip op. at 1 fn.3 (2020) (citations omitted).

² Dates hereafter are in 2019 unless otherwise indicated.

³ In light of our award of the disputed work to IAM-represented employees, we find it unnecessary to pass on IAM's exception to the hearing officer's finding that several subpoenas served by IAM were largely cumulative and immaterial to a determination of the assignment issues involved in this case.

⁴ The PMA is a multiemployer association that bargains with ILWU on behalf of its members who are operating companies at various ports on the West Coast, including the Port of Seattle. It negotiated the ILWU-PMA agreement.

⁵ Specifically, the Employer uses ILWU-represented mechanics for M&R work in Oregon (Coos Bay and Portland), Washington (Longview and Port of Tacoma), and California (Oakland, San Diego, and Port Hueneme). In the Port of Seattle, following a similar 10(k) proceeding, ILWU-represented workers have performed M&R work for the Employer at Pier 91. See *Machinists Lodge 160 (SSA Marine, Inc.)*, 357 NLRB 126 (2011) (awarding work at Terminal 91 in Seattle to ILWU and incorporating by reference a prior vacated decision in *Machinists Lodge 160 (SSA Marine, Inc.)*, 355 NLRB 23 (2010)).

⁶ The Employer has been party to collective-bargaining agreements with IAM covering all M&R work on equipment owned and/or leased by the Employer in the Puget Sound area since the 1940s. Their most recent agreement runs from 2017–2020.

marine terminals that are listed as being ‘red-circled’ in the [LOU].”

Terminal 5 at the Port of Seattle is owned by the Northwest Seaport Alliance and, from 1997 to 2014, was leased and operated by PMA-member American President Lines. Because American President Lines used IAM-represented mechanics to perform M&R work, Terminal 5 was red-circled. In 2014, American President Lines ceased its operations at Terminal 5 and, for the next 4 years, Terminal 5 and its cranes remained mostly unused.

In 2018, the Northwest Seaport Alliance, in a joint partnership between the Ports of Seattle and Tacoma, developed a modernization plan, which included reopening Terminal 5 and leasing its operation to the Employer.⁷ In August 2018, the Employer unveiled plans to reopen Terminal 5 for container cargo and informed IAM that, because the terminal had lost its red-circle status, the Employer would use ILWU labor to perform M&R work at Terminal 5.⁸ IAM offered to supply mechanics but, in or about September 2018, on the advice of the PMA, the Employer assigned the work to ILWU-represented mechanics,⁹ who have performed it ever since.

In January 2019, the Employer subcontracted some of the M&R work to Pacific Crane Maintenance, LLP, which used ILWU-represented mechanics from Southern California.¹⁰

By letter dated March 18, 2019, IAM informed the Employer that it would take economic action against the Employer, including picketing and striking, unless the Employer assigned the disputed work at Terminal 5 to IAM-represented employees.

B. Work in Dispute

The parties stipulated that the work in dispute is the maintenance and repair work at Terminal 5 in the Port of Seattle, Seattle, Washington.

C. Contentions of the Parties

All parties agree that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. The parties also agree that IAM and ILWU have competing claims for the M&R work at Terminal 5. And both IAM and ILWU assert that their respective collective-bargaining agreements cover the disputed work.

IAM contends that the work in dispute should be assigned to employees it represents based on the factors of

collective-bargaining agreements, past practice, area and industry practice, relative skills, and economy and efficiency of operations. Conversely, ILWU contends that the work in dispute should be assigned to employees it represents based on the factors of current assignment and job loss. It also argues that a majority of the factors are neutral and, therefore, “do not favor changing the status quo.”

The Employer declined to give a preference.

D. Applicability of the Statute

The Board may proceed with determining a dispute pursuant to Section 10(k) of the Act only if there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. See *Operating Engineers Local 150 (R&D Thiel)*, 345 NLRB 1137, 1139 (2005). This standard requires finding that there is reasonable cause to believe that there are competing claims for the disputed work between rival groups of employees and that a party has used proscribed means to enforce its claim to the work. *Id.* Additionally, there must be a finding that the parties have not agreed on a method for the voluntary adjustment of the dispute. *Id.*

1. Competing claims for work

The parties stipulated, and we find, that ILWU and IAM both claim the work in dispute.

2. Use of proscribed means

By letter dated March 18, 2019, IAM notified the Employer that it would take all actions necessary, including picketing, to obtain assignment of the disputed work. Such a threat establishes reasonable cause to believe that IAM used proscribed means to enforce its claim to the work in dispute. See *Highway Road and Street Construction Laborers, Local 1010 (New York Paving)*, 366 NLRB No. 174, slip op. at 3 (2018).

3. No voluntary method for adjustment of dispute

Finally, the parties stipulated, and we find, that there is no agreed-upon method for the voluntary adjustment of this dispute that would bind all parties. We therefore find that this dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. See *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting System)*, 364 U.S. 573, 578 (1961).

⁷ The modernization plan also included the July 2019 closure of Terminal 46, which was run by another terminal operator. At the time of the hearing, 45 ILWU-represented mechanics worked at Terminal 46.

⁸ The plan was for Terminal 5 to receive a ship that was previously being received at Terminal 30 (and serviced by IAM-represented mechanics).

⁹ At that time, the Employer hired two ILWU-represented mechanics—Dustin Crabtree and Seth Gelin— to start rehabilitating some of the cranes at Terminal 5.

¹⁰ The Employer hired subcontractors to work at Terminal 5 alongside the two ILWU-represented mechanics until other ILWU-represented mechanics at Terminal 46, which was scheduled to close after Terminal 5 reopened, became available.

The Board's determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402, 1410–1411 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

There is no evidence in the case record of a Board certification concerning the employees involved in this dispute.

As mentioned above, the Employer has collective-bargaining agreements with both IAM and ILWU. IAM's current collective-bargaining agreement with the Employer provides that "I.A.M. represented employees shall perform all M&R work, including owned and leased equipment and all M&R work on containers and chassis at all Puget Sound Region Intermodal, Marine or Container Terminals." This language clearly covers the work in dispute. Section 1.731 of the ILWU-PMA agreement also covers that same work. It provides that "the maintenance and repair work on all new marine terminal facilities that commence operations after July 1, 2008 shall be assigned to the ILWU," and that "[n]ew marine terminals shall include new facilities, relocated facilities, and vacated facilities."¹¹ (Emphasis added.)

Both unions have contractual provisions that arguably give them a claim to the work in dispute. We therefore find that this factor does not favor awarding the work in dispute to employees represented by either union.¹² See, e.g., *Longshoremen ILWU, Alaska Longshore Division and ILWU, Unit 22 (American President Lines, LTD)*, 369 NLRB No. 63, slip op. at 4 (2020).

2. Employer preference and past practice

The factor of employer preference is generally entitled to substantial weight. See *Iron Workers Local 1 (Goebel*

Forming), 340 NLRB 1158, 1163 (2003). Here, the Employer declined to give a preference. When explicitly asked which union the Employer preferred, Edward DeNike, the Employer's Senior Vice President, responded that because the Employer works with hundreds of workers from both unions on a continuing basis, he would "not [give] a preference," and that he "cannot [give] a preference on this."

Although the Board has found the employer preference factor to have no bearing on a case where an employer expressly stated that it did not have a preference,¹³ the Board has not limited itself to considering the employer's explicit preference (or refusal to state one) and has relied on other evidence presented during a hearing to make a conclusion as to the employer's preference. See *Operating Engineers Local 150 (United Drilling)*, 337 NLRB 651, 653 (2002) (inferring preference by relying on other considerations—assignment and past practice, refusal to reassign the work after receiving threat of proscribed means, and testimony about dissatisfaction with the work of one of the unions—where the employer failed to expressly state a preference, and distinguishing the case from *Sign Painters Local 756 (Heritage Display)*, 306 NLRB 818, 820 (1992), on the grounds that the employer in *Heritage Display* "expressly stated that it did not have a preference," and the employer here "made no such statement").¹⁴ We find that the Employer's preference to assign the work to IAM may be inferred from: (1) the testimony of one of the Employer's witnesses that, were it not for the ILWU-PMA agreement, the Employer would have assigned the work in dispute to IAM-represented mechanics; and (2) the Employer's past practice.¹⁵ See *id.* Notably, when asked whether, in the absence of the ILWU-PMA agreement, he "would have preferred to have moved the IAM mechanics over," DeNike answered, "yes, . . . if we didn't have [a] contract obligation to do so, we would have used [IAM-represented mechanics] we already had

¹¹ As noted *supra*, the ILWU-PMA agreement also references the LOU.

¹² The IAM argues that the Board here should follow its interpretation of the same contracts set forth in a prior case—*Machinists Lodge 160 (SSA Marine, Inc.)*, 357 NLRB 126 (2011) (incorporating by reference a prior vacated decision in *Machinists Lodge 160 (SSA Marine, Inc.)*, 355 NLRB 23 (2010)). In that case, the Board found that the collective-bargaining agreement factor slightly favored awarding the work to IAM-represented employees. *Id.* at 25. The question presented in the earlier case, however, was whether the terminal at issue was "new" and, therefore, not subject to the "red-circled facility" exception in the ILWU-PMA agreement that permitted hiring non-ILWU-represented mechanics. Here, it is undisputed that American President Lines vacated Terminal 5, which consequently lost its red-circle status based on language in the ILWU-PMA agreement. Accordingly, both unions have equally strong claims to the work in dispute based on their respective contracts.

¹³ See *Sign Painters Local 756 (Heritage Display)*, 306 NLRB 818, 820 (1992) (finding no "clear-cut" preference where employer testified

that it "does not 'really have [a] preference'" (emphasis added). The instant case is distinguishable from *Heritage Display* as, here, the Employer stated that it would not give a preference.

¹⁴ In the absence of an explicit statement of preference, ILWU argues that the only other evidence the Board should consider in determining the Employer's preference is the current assignment of the work. However, we find that the Employer provided additional testimony, discussed *infra*, that sheds light on its preference.

¹⁵ While the Board does not generally examine reasons for an employer's preference unless there is evidence that the employer was coerced into its preference, here, we examined the Employer's stated reasons for assigning the work, which shed light on its unstated preference. See generally *SSA Marine, Inc.*, *supra* at 26 (refraining from examining why the employer preferred ILWU over IAM for the work in dispute). Nothing in this decision should be read as affecting the Board's practice of refraining from analyzing why an employer prefers a particular union.

working for us [at terminals 18 and 30].” Accordingly, although the Employer refused to give a preference, DeNike’s testimony supports the conclusion that, but for the ILWU-PMA agreement, the Employer would prefer IAM-represented mechanics to do the work in dispute. We find that this factor weighs in favor of awarding the work to IAM-represented mechanics.¹⁶

Although the parties stipulated that IAM-represented mechanics performed the M&R work at Terminal 5 prior to 2014, there is no past practice *with the Employer* at Terminal 5 because Terminal 5 was previously operated by American President Lines and not the Employer. There is no evidence that, prior to 2018, the Employer ever leased or operated out of Terminal 5. As noted *supra*, however, the Employer plans to use cranes at Terminal 5 that were previously operated by IAM-represented mechanics. Because IAM-represented mechanics previously handled the Terminal 5 cranes, we find that this factor weighs in favor of awarding the work in dispute to IAM-represented mechanics.¹⁷ Cf. *International Union of Operating Engineers, Local 150, AFL–CIO (Jack Gray Transport, Inc. d/b/a Lakes & Rivers Transfer)*, 364 NLRB No. 132, slip op. at 3 (2016) (finding that, although there was no past practice because the work in dispute involved new equipment that had not been used previously, the past practice factor weighed in favor of the union whose members had traditionally handled the machinery that was being replaced by the new equipment).

3. Current assignment

The disputed work is currently assigned to mechanics represented by ILWU, which argues, in the absence of supporting precedent, that this consideration should be decisive. We find that this factor weighs in favor of awarding the work to ILWU-represented mechanics, but we reject ILWU’s argument that this factor on its own should

result in the work being awarded to ILWU-represented mechanics.¹⁸

4. Area and industry practice

The parties stipulated that both IAM- and ILWU-represented mechanics perform the type of work in dispute—M&R work—on the West Coast. At the Port of Seattle, IAM-represented mechanics perform M&R work at Terminals 18, 25, and 30, and ILWU-represented mechanics perform M&R work at Terminals 5 (the terminal in dispute) and 46 (which was scheduled to close in July 2019), and at Pier 91. With the July 2019 closing of Terminal 46, a majority of the M&R work at the Port of Seattle would be done by IAM-represented mechanics. The parties also stipulated that, at the nearby larger Port of Tacoma and other Puget Sound facilities, most M&R work is performed by ILWU-represented employees. Accordingly, we find that this factor does not favor an award to either group of employees. See, e.g., *Machinists Lodge 160 (SSA Marine, Inc.)*, 355 NLRB 23, 26 (2010) (finding that the factor of area and industry practice does not favor an award to employees represented by IAM or ILWU where both unions’ mechanics performed M&R work on the West Coast, but the majority of the work in Seattle is performed by IAM-represented mechanics and the majority of the work at nearby Port of Tacoma and other Puget Sound facilities is performed by ILWU-represented mechanics), incorporated by reference, 357 NLRB 126 (2011).

5. Relative skills and training

DeNike testified that both unions’ mechanics are qualified to perform the work at Terminal 5.

The evidence established that IAM has an approximately 4-year-long apprenticeship program. The program, which IAM manages jointly with various

¹⁶ Although our finding that the Employer prefers IAM-represented mechanics differs from the current assignment to ILWU-represented mechanics, in addition to the past practice factor, we find that the factors of skills and trainings, and economy and efficiency also support the inference that the Employer prefers IAM-represented mechanics. See generally *International Longshore and Warehouse Union, Local 12 (Southport Lumber Co.)*, 367 NLRB No. 16, slip op. at 7 (2018) (finding that, although inconsistent with past practice, an employer’s stated preference was supported by consideration of relative skills and economy and efficiency of operations).

¹⁷ Additionally, while there is no specific past practice for the Employer at Terminal 5, prior to the LOU, the Employer had a past practice of assigning the work in dispute at its other terminals in the Port of Seattle to IAM-represented mechanics. See *SSA Marine, Inc.*, 355 NLRB at 26 (noting that “[t]he Employer has a practice of assigning M&R work in the Port of Seattle to IAM-represented mechanics”).

¹⁸ ILWU claims that in Sec.10(k) cases between the parties, “the Board has endorsed the employer’s assignment of the work and the maintenance of the status quo, recognizing that the employers are generally in the best position to assess the appropriate assignment in this

complex and changing industry.” However, the cases cited by ILWU in support of its claim show that, in each situation, along with the prevailing union being the one currently performing the assigned work, the employer explicitly stated a preference for the prevailing union. See *SSA Marine, Inc.*, 355 NLRB at 27 (awarding the disputed work to the employer-preferred ILWU, which had already been assigned the work); *Machinists District 160 Local 289 (SSA Marine)*, 347 NLRB 549, 552 (2006) (awarding maintenance work to the employer-preferred IAM, which had most recently performed the work); *Automotive Trades District Lodge 190 (Sea-Land Service)*, 322 NLRB 830, 835 (1997) (awarding the work to IAM, which the employer preferred, but which, although initially assigned the work, was not performing the work at the time of the dispute); *Longshoremen’s and Warehousemen’s Union, Local 19 (West Coast Container Service, Inc.)*, 266 NLRB 193, 197 (1983) (awarding the work in dispute to the employer-preferred IAM, which had already been assigned the work). As noted above, an employer’s preference is given substantial weight. See *Goebel Forming*, 340 NLRB at 1163. Accordingly, it is clear why the preferred unions in the cases cited by ILWU prevailed.

employers, including the Employer, is certified by the state of Washington, and has existed for approximately 40 years. In addition, when the Employer assigned the work to ILWU-represented mechanics, IAM-represented mechanics had more experience handling Terminal 5's cranes, which they had previously maintained as employees of American President Lines, which ceased operations there in 2014.

By contrast, ILWU has no comparable apprenticeship program. At best, the evidence shows that the Employer: (1) was satisfied with the two ILWU-represented mechanics at Terminal 5, Dustin Crabtree¹⁹ and Seth Gelinias; and (2) believed that ILWU-represented mechanics who would become available for transfer when Terminal 46 closed were qualified. It should be noted, however, that although Crabtree's and Gelinias' skills and training were notable, their individual qualifications do not establish a union-wide level of skills and training. On balance, we find that this factor weighs in favor of awarding the work to IAM-represented mechanics.

6. Economy and efficiency of operations

DeNike testified that it has "lesser [sic] cost with IAM," and it is "much more efficient and economical" to use IAM-represented mechanics.

The record confirms that there are more costs associated with using ILWU-represented mechanics than there are with using IAM-represented mechanics. According to DeNike, "the main difference . . . is that the IAM works eight hours a day, gets paid eight hours a day" and that "ILWU gets paid ten hours a day and works nine hours a day." Additionally, DeNike testified that, in hiring ILWU-represented mechanics, the Employer would need approximately fifteen mechanics—which is twice as many as the seven or eight the Employer would need if it hired IAM-represented mechanics. Consequently, hiring

ILWU-represented mechanics would be more expensive for the Employer.²⁰

In addition to the daily cost differentials, ILWU runs an exclusive hiring hall, which is paid for primarily by employers through an hourly assessment on labor.²¹ IAM does not have a hiring hall and, therefore, does not have an equivalent cost associated with the hiring of its mechanics.

Moreover, the Employer does not need to provide tools for IAM-represented mechanics, a consideration that helps in determining the outcome of this factor, and which the Employer framed as "an advantage." See *Laborers' Local 833 (Patent Scaffolding)*, 297 NLRB 997, 999 (1990) (finding that the factor of economy and efficiency of operations weighs in favor of awarding the work to employees for whom the employer does not need to provide tools). Additionally, unlike IAM-represented mechanics who can take their tools with them as they work in the Employer's various terminals, ILWU-represented mechanics cannot take the tools back and forth with them. The Employer testified that ILWU-represented mechanics' inability to take tools with them as they worked was a "loss of efficiency."

The Employer's evidence establishes that it is more efficient to use IAM-represented mechanics because it can transfer them from its other terminals to Terminal 5 without spending time interviewing prospective mechanics, as it would have to do if it were to use ILWU-represented mechanics. IAM highlights the Employer's evidence and notes the inefficiency the Employer would experience by having to call for additional mechanics from the ILWU's hiring hall. ILWU counters that there are economies and efficiencies in using either work force, but ultimately concedes that, on balance, the factor of efficiency and economy is either neutral or weighs slightly in favor of IAM.²²

¹⁹ Interestingly, the record seems to indicate that the skills gained by Crabtree are due, at least in part, to him having previously been an IAM-represented member. The evidence shows that Crabtree previously worked at Terminal 5 for another employer, was represented by IAM, and participated in IAM's 4-year apprenticeship during this time.

²⁰ Neither the unions nor the Employer used wage differentials to argue economic advantage. See *Lakes & Rivers Transfer*, supra, slip op. at 4 (citing *Southwest Regional Council of Carpenters (Standard Drywall, Inc.)*, 346 NLRB 478, 483 (2006), and *Painters Local 91 (Frank M. Burson, Inc.)*, 265 NLRB 1685, 1687 (1982)), for the principle that the Board does not consider wage differentials as a basis for awarding disputed work). Instead, in finding its use of IAM-represented mechanics more economical, the Employer focused on the fact that, regardless of wage differentials, it would need more ILWU-represented mechanics, who clock two additional hours per day, than IAM-represented mechanics.

²¹ The record also reveals that when using ILWU-represented mechanics provided by subcontractors, the Employer must pay: (1) \$5000 per week as a management fee to the subcontracting companies; (2) 10 percent sales tax on the subcontracted labor; (3) a markup, or "override,"

of approximately 10 percent to the company providing subcontractors; and (4) \$8000-\$10,000 on additional tools for the subcontracting mechanics who traveled to Washington from other states to use at Terminal 5.

²² Although it makes this concession, ILWU argues that its mechanics are more versatile than IAM-represented mechanics because they can work with the Employer's longshore work force as needed. See *Laborers (Eshbach Bros., LP)*, 344 NLRB 201, 204 (2005) (finding the factor of economy and efficiency of operations weighed in favor of the union whose members were performing other work on the project aside from the disputed work); *Laborers Indiana District Council (E&B Paving, Inc.)*, 340 NLRB 1256, 1259 (2003). However, we find that this assertion is insufficient to outweigh the factors weighing in IAM's favor: the need for fewer mechanics and the ability to substitute additional mechanics from other terminals as needed. See *United Industrial Workers of North America (Albin Stevedore Co.)*, 182 NLRB 633, 636-637 (1970) (finding that economy and efficiency of operations favored award of work to union that has more members readily available to perform disputed work and who are qualified to substitute for one another).

We find that this factor weighs slightly in favor of assigning this work to mechanics represented by IAM.

7. Job loss

Although not always a factor, the Board has considered job loss when making an award of the work in dispute. See, e.g., *Iron Workers Local 40 (Unique Rigging)*, 317 NLRB 231, 233 (1995). The record shows that the closure of Terminal 46 would result in the layoff of 45 ILWU-represented mechanics.²³ DeNike estimated that, if the work were awarded to ILWU-represented mechanics, the Employer would hire approximately 15 ILWU-represented mechanics. Accordingly, the use of ILWU-represented mechanics at Terminal 5 would prevent at least 15 layoffs. If the work were awarded to IAM-represented mechanics, those 15 ILWU-represented mechanics would join the other 30 mechanics from Terminal 46 in unemployment. However, if the work were awarded to ILWU-represented mechanics, IAM-represented mechanics would see no job loss. Instead, IAM-represented mechanics would experience a loss of hours. This factor weighs in favor of awarding the work to mechanics represented by ILWU.

CONCLUSIONS

After considering all the relevant factors, we conclude that employees represented by IAM are entitled to perform the work in dispute. We reach this conclusion relying on the factors of employer preference, past practice, skills and training, and economy and efficiency of operations.

We find that these factors outweigh the two factors—current assignment and job loss—that favor an award of the work to ILWU-represented employees. In making this determination, we are awarding the work to employees represented by IAM, not to the IAM. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute:

Employees of SSA Terminal, represented by International Association of Machinists and Aerospace Workers District Lodge 160, Local Lodge 289, are entitled to perform maintenance and repair work on SSA Terminal's equipment at Terminal 5, the Port of Seattle, in Seattle, Washington.

Dated, Washington, D.C. July 16, 2020

Marvin E. Kaplan,

Member

William J. Emanuel,

Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

²³ As noted *supra*, Terminal 46 was scheduled to close in July 2019.